

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Maziers § Atty. Dkt. No.: E-872
Serial No.: 10/553,572 § Group Art Unit: 1794
Confirmation No.: 1582 § Cust. No.: 25264
Filed: October 23, 2006 § Examiner: Lopez
For: Metallocene Produced Polyethylene
for Fibres Applications

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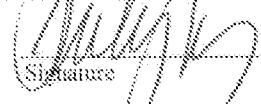
Dear Honorable Commissioner:

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APPEAL BRIEF

Appellants submit this Appeal Brief to the Board of Patent Appeals and Interferences on appeal from the decision of the Examiner of Group Art Unit 1786 dated September 9, 2010, finally rejecting claims 9-15.

Real Party in Interest

The present application has been assigned to TOTAL Petrochemicals Research Feluy, Zone Industrielle C, Seneffe, Belgium B7181.

Related Appeals and Interferences

Appellants assert that no other appeals, interferences or judicial proceedings are known to the Appellants, the Appellants' legal representative or Assignee that will

directly affect, be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Claims 1-8 were originally presented in the application. Claims 1-8 were cancelled and claims 9-27 were added in a Preliminary Amendment. Claims 16-27 were withdrawn in a Response to Restriction Requirement. Accordingly, claims 9-15 are pending in the application. Claims 9 and 10 stand rejected under 35 U.S.C. §102(b) and claims 9-15 stand rejected under 35 U.S.C. §103(a). The rejection of the pending claims is appealed. The pending claims are shown in the attached Appendix A.

Status of Amendments

No amendments have been made to the pending claims in response to the Final Office Action.

Summary of Claimed Subject Matter

Independent claim 9 recites monofilaments or stretched tapes, unwoven or woven into raffia prepared from long chain branched metallocene-produced polyethylene resin. See, Specification, at least Specification at least page 1, lines 5-6 and page 3, lines 1-3.

Grounds of Rejection to be Reviewed on Appeal

1. The rejection of claims 9-10 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,728,272 (*Lai*).
2. The rejection of claims 9-12 and 14 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,861,202 (*Kimura*) in view of *Lai*.
3. The rejection of claims 13 and 15 under 35 U.S.C. §103(a) as being unpatentable over *Kimura* in view of *Lai* and U.S. Patent No. 5,451,450 (*Erderly*).

Arguments

I. THE EXAMINER ERRED IN REJECTING CLAIMS 9-10 UNDER 35 U.S.C. §102(b) AS BEING ANTICIPATED BY *Lai*.

Lai teaches substantially linear polymers, rather than the long chain branched polyethylene, as claimed. See, Abstract and entirety of *Lai*. The reference must "sufficiently describe the claimed invention to have placed the public in possession of it". See, *Minnesota Mining & Mfg. Co. v. Johnson & Johnson Orthopedics, Inc.*, 976 F.2d 1559, 1572, 24 U.S.P.Q.2d 1321, 1332 (Fed. Cir. 1992). While Appellants recognize that *Lai* defines substantially linear as including up to about 3 long chain branches/1000 carbons (see, column 3, lines 57-64), the entirety of *Lai* teaches away from utilizing a long chain branched polyethylene to form monofilaments or tapes, as claimed.

Further, while Appellants again acknowledge that *Lai* teaches that substantially linear polymers may include a limited number of long chain branches, the pending claims recite long chain branched polyethylene, not substantially linear polyethylene containing very few long chain branches. A term is to be given the plain meaning determined by one skilled in the art. See, MPHP §2111.01. As known in the art, a long chain branched polyethylene is not a substantially linear polyethylene (see, Specification, column 4, line 65 stating that "the term 'linear olefin polymers' means that the olefin polymer does not have long chain branching"). Accordingly, Appellants respectfully submit that *Lai* fails to teach, show or suggest all of the features of the pending claims and reversal of the rejection is respectfully requested.

II. THE EXAMINER ERRED IN REJECTING CLAIMS 9-12 AND 14 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER *KIMURA* IN VIEW OF *Lai*.

As recognized by the Examiner, *Kimura* does not teach a polymer having long chain branches (see, Final Office Action at page 5, third paragraph). However, the Examiner asserts that *Lai* provides such missing limitation. Appellants respectfully disagree and submit that for the reasons discussed above, *Lai* does not teach, show or suggest long chain branched polyethylene (as defined by the instant Specification), and as

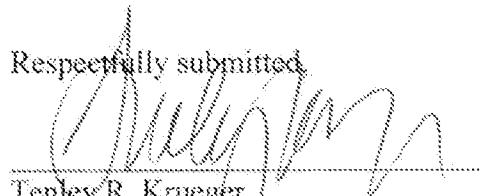
such, does not supply the features acknowledged as missing from *Kimura*. Based on such previously presented arguments, Appellants respectfully request reversal of the rejection.

III. THE EXAMINER ERRED IN REJECTING CLAIMS 13 AND 15 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER *KIMURA* IN VIEW OF *LAI* AND *ERDERLY*.

As discussed previously herein, neither *Kimura* nor *Lai* teaches a long chain branched polymer. The Examiner utilizes *Erderly* to teach annealing the polyethylene film. See, Final Office Action at page 6, third paragraph. The Examiner does not assert that *Erderly* supplies the features absent from the primary references. Accordingly, Appellants respectfully submit that the combination of references does not teach, show or suggest the features of the pending claims and respectfully request reversal of the rejection.

Conclusion

In conclusion, the references of record, either alone or in combination, fail to teach, show or suggest long chain branched polyethylene, as recited in the pending claims. Thus, Appellants respectfully request reversal of the rejections of claims 9-15.

Respectfully submitted,

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Appendix A
Pending Claims

9. Monofilaments or stretched tapes, unwoven or woven into raffia prepared from long chain branched metallocene-produced polyethylene resin.
10. The monofilaments or stretched tapes of claim 9 wherein the metallocene component is a tetrahydroindenyl.
11. The monofilaments or stretched tapes of claim 9 produced by the steps comprising:
 - (a) providing a metallocene-produced medium density polyethylene resin having long chain branches;
 - (b) producing a film from the polyethylene resin of step (a);
 - (c) orienting the film obtained from step (b) by stretching;
 - (d) cutting the film of step (b) into strips; and
 - (e) optionally, annealing the stretched film.
12. The monofilaments or stretched tapes of claim 11 wherein the stretching is carried out at a temperature from about 10 to about 70° C lower than the melting temperature of the resin.
13. The monofilaments or stretched tapes of claim 12 wherein the stretched film is annealed at a temperature of from about 5 to about 10° C lower than the stretching temperature.
14. The monofilaments or stretched tapes of claim 11 wherein the stretching is performed by passing the film over a first and second roller and the ratio of the roller's velocities is in the range of from about 5 to about 7.
15. The monofilaments or stretched tapes of claim 14 wherein the stretching is carried out at a temperature from about 10 to about 70° C lower than the melting temperature of

the resin and the stretched film is annealed at a temperature of from about 5 to about 10° C lower than the stretching temperature.

Appendix B

Evidence

Not Applicable

Appendix C
Related Proceedings

Not Applicable